REMARKS

Status of the Claims

Claims 51-61 are pending. Claims 51 and 57 are amended.

On April 6, 2005, Applicant responded to the outstanding non-final Office Action. Applicant assumes that the Amendment has been entered since there is no indication to the contrary. Additionally, the contents of the Remarks previously submitted are incorporated herein by reference.

On July 12, 2005, Applicant received a communication from the USPTO wherein the Examiner alleges that the rejection was not fully addressed. This paper is to address that communication , and submit an additional amendment to claims 51 and 71.

The communication appears to raise two issues: (1) that the reply was not fully responsive, and (2) and additional issue with respect to multiple layers, beginning with "Another note,..." (the issue related to "multiple layers" was not raised in the Office Action).

Accordingly, both issues are addressed, below:

(1) Issues Under 35 U.S.C. § 112, Second Paragraph

In the previous Office Action, claims 51-61 were rejected under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite.

Initially, Applicant's representative finds it somewhat unusual that the reply was deemed not being fully responsive, but no specific reasons are given as to why.[1] An attempt to schedule an interview by leaving voicemails with the Examiner was not successful.

Accordingly, the comments below address what are perceived as the all the 112, second paragraph issues raised in the Office Action.

(1) The Office Action states that "the claims are very broadly claimed." See paragraph 4 of the office action.

This statement was addressed in the response. See the last paragraph beginning on page 7. Of course, without more, such a statement does not even raise a 112, second paragraph issue. Prior art, and perhaps enablement should define claim scope in this case. Please see M.P.E.P § 2173.14, entitled "Breath Is Not Indefiniteness."

(2) The office action stated that the term "fabric does not appear to be positively recited (paragraph 5 of the office action, line 1). This was previously addressed. See claim 51 as amended.

[1] The reason for the communication was described as follows: "The reply filed on 04/12/05 is not fully responsive to the prior Office Action because of the following: [sic] Perhaps Applicant's counsel has misunderstood the rejection made under 112- 2nd paragraph. The rejection has not been fully addressed and in an earnest attempt on the Examiner's part to facilitate prosecution [sic]."

(3) The office action states that "no structural or chemical composition stated," and "any fabric having any structure reads on this limitation" (paragraph 5 of the office action, lines 2-4).

In claim 51, layers (i.e., structure) were set forth. Applicant is unclear as to the meaning of the Examiner's phrase "any fabric having any structure or composition reads on this..." The term "fabric" has been so prevalent in allowed claims for decades, it is not believed that the Examiner is alleging that the term is *ipso facto* indefinite. Additionally, there was no specific allegation that the term was indefinite. The statement by the Examiner appeared to simply relate to some statement of perceived claim scope. Also, it should not be indefinite based on its breadth, as no reference has been cited to date even suggesting the same use of TPO in connection with fabric.

(4) The office action apparently objects to the use of the phrase "chemical barrier fabric" in the preamble of the claim. The purpose of the preamble is to indicate the statutory class of the claim or to identify the thing that is to be claimed.

The Examiner has not presented any subjected evidence supporting the assertion that the phrase is indefinite. It is only required that the claim set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. See M.P.E.P. § 2173.02. There is no indication that the claim would not serve the notice function for one in the chemical barrier fabric art.

Additionally, there is no indication that a proper analysis was conducted. For example, the Examiner should conduct her analysis in light of (a) the content of the particular application

disclosure, (b) the teachings of the prior art, and (c) the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made. See M.P.E.P. § 2173.02, which sets forth this analysis and states that it must occur.

Applicant respectfully submits that in the present case, proper analysis would yield the following:

(a) The specification sets forth numerous examples of chemical barrier materials (there are at least seven on the first page).

(b) An example of the prior art of record is commonly owned US 5,948,708, to Langley. It is directed to and claims a flash fire and chemical barrier fabric, with "chemical barrier fabric" language in the preamble. Examiner Singh allowed the '708 patent.

(c) The record completely devoid of any indication of a supported, subjective statement as to how one of ordinary skill in the chemical barrier fabric art would interpret the preamble language "chemical barrier fabric."

Furthermore, since it could be argued that, as part of the preamble, the phrase "chemical barrier fabric" states the intended use of the invention, rather than any distinct definition of any of the claim features. As such, in that capacity it may be of no significance to claim construction. Applicant will gladly remove "chemical barrier" from the claim if such action is the more preferred by the Examiner.

(5) The office action states "multiple layers of what?" See paragraph 5, line 5. This was addressed in the amendment to claim 51, where layers are set forth.

(6) The office action alleges "fabric is a crucial ingredient... Please clarify the claims to recite the same." See paragraph 5, lines 8-10. The "base sheet of fabric" was addressed in the amendment to claim 51. Further than that, there is no "crucial ingredient designation" requirement, and Applicant respectfully submits that such requirement is unprecedented. If the Examiner maintains this request, she is respectfully requested to show authoritative support (Federal Circuit, Code of Federal Regulations, etc.) for such action.

(7) The office action alleges that the present invention, as claimed, "appears to be something that may be joined with a fabric and is only a coating having resultant properties of melt flow rate, stress cracking, and is impermeable." See paragraph 5, lines 12-15. This was addressed in the amendment to claim 51. Furthermore, this statement reflects more of a breath issue than a definiteness issue. For example, there is no assertion that the features of the claim (melt flow rate, for example) are indefinite.

(8) Paragraphs 6 and 7 of the office action were addressed in the amendments to claim 51

(B) The "Layer Issue" Raised in the Communication

The communication requests Applicant to "be specific as to what the multiple layers comprise [sic]." Applicant respectfully suggests that the amendment sufficiently sets forth layers and elements that the layers can include. From a definiteness standpoint, it is clear that the

language is sufficient. The film laminate outer layer is addressed in the previous amendment and above.

Conclusion

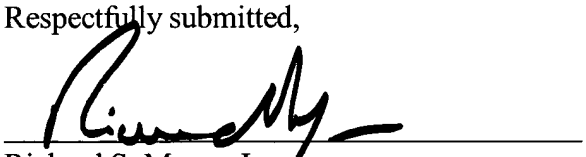
From the foregoing, further and favorable reconsideration in the form of a Notice of Allowance is in order and such action is earnestly solicited.

This is the third communication mailed by Examiner Singh since March 31, 2004 indicating that a reply was not fully responsive to a prior office action. Applicant respectfully requests that the Office be more proactive regarding the examination of this Application. It is believed that many of these issues could have been more expeditiously resolved. For example, in each reply, Applicant's representative has requested that the Examiner contact him if such could answer any questions/resolve any issues.

As stated in the previous response at least four primary Examiners have reviewed this Application and it seems that each have had different views with respect to allowable material. Additionally, multiple interview agreements have been rescinded with no notice to Applicant other than the following office action. The above, and multiple communications like the one outstanding, have contributed to a prosecution that has unnecessarily been too long.

If the Examiner has any questions concerning this Amendment or the Application in general, he is respectfully urged to contact Richard S. Myers, Jr. (Reg. No. 42,022) at the number listed below.

Respectfully submitted,



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